

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

**ASHEVILLE DIVISION**

<b>JANE ROE,</b>	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	<b>Civil No. 1:20-cv-00066-WGY</b>
	)	
<b>UNITED STATES OF AMERICA, <i>et al.</i>,</b>	)	
	)	
<i>Defendants.</i>	)	
	)	
	)	
	)	

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**PLAINTIFF’S OPPOSITION TO DEFENDANTS’ REQUEST TO STRIKE OR, IN THE  
ALTERNATIVE, MOTION TO FILE A SURREPLY**

Plaintiff Jane Roe (“Roe”), by and through her attorney, hereby responds in opposition to defendants’ request to strike, *see* ECF No. 57, at 1, 15–16, or, in the alternative, requests leave pursuant to Local Rule 7.1(e) to file a surreply opposing defendants’ motions to dismiss.

In defendants’ reply in support of their “Joint Motion to Set Deadline to Respond to Early Discovery Requests,” defendants contend that the Court “should strike or disregard” pages 4 through 19 and page 21 of Roe’s opposition brief. ECF No. 57, at 15. In those pages, Roe explained that defendants are required to comply with discovery, in part, because the arguments raised in their motions to dismiss cannot be resolved in their favor without “a proper record, sufficiently developed through discovery proceedings.” *Al Shimari v. CACI Int’l, Inc.*, 679 F.3d 205, 220 (4th Cir. 2012) (en banc). Moreover, by raising factual issues and attaching documents from the EDR administrative record, defendants have invited discovery prior to a ruling on their motion to dismiss, or alternatively, denial of their motion to dismiss because it relies on factual assertions untested by discovery. Though Roe’s arguments are directly responsive to



defendants' argument that discovery is *not* warranted at this stage of litigation, defendants contend they are a "back-door attempt" to file a surreply. ECF No. 57, at 1. To ensure that the issues in this case are adequately briefed and to aid in the Court's resolution of defendants' motions, plaintiff opposes their request to strike or, in the alternative, requests leave to file a surreply.

A surreply would also allow Roe to respond to the arguments that defendants have improperly raised for the first time in their reply briefs in support of their motions to dismiss. Some of these arguments were discussed in Roe's brief opposing a stay of discovery because they raise factual disputes that cannot be resolved in defendants' favor prior to discovery. *See, e.g.*, ECF No. 55, at 20 (new qualified immunity argument); *id.* at 16 (new argument that defendants were not Roe's "employer" or the "primary tortfeasor"). As another example, defendants argue for the first time on reply that Roe's allegations under 42 U.S.C. §§ 1985(3) and 1986 "fail to allege with any specificity the persons who agreed to the alleged conspiracy, the specific communications amongst the conspirators, or the manner in which any such communications were made." ECF No. 53, at 19; *see also* ECF No. 48, at 24–25 (noting that defendants' arguments were "conclusory" and that they did "not explain what elements they believe she has not alleged"). Defendants' late argument prejudiced Roe because it prevented her from amending her complaint as a matter of course to address any perceived deficiencies. *See* Fed. R. Civ. P. 15(a)(1). Regardless, their argument is meritless because the complaint is replete with examples of defendants agreeing on, and implementing, actions that violated Roe's equal protection rights, *see* ECF No. 48, at 1–13, arguments which Roe would develop further in a surreply if considered useful to the Court.



Pursuant to Local Rule 7.1(b), the undersigned has consulted with represented defendants' counsel. Represented defendants' counsel opposes Plaintiff's request.

This the 29th day of July, 2020.

Respectfully Submitted,

/s/ Cooper Strickland  
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Counsel for Plaintiff



### **CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of July, 2020, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Gill P. Beck at Gill.Beck@usdoj.gov

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